

HOUSE No. 3790

By Ms. Jehlen of Somerville, petition of Patricia D. Jehlen and others to provide for written warnings and civil citations relative to the child labor laws. Labor and Workforce Development.

The Commonwealth of Massachusetts

PETITION OF:

Patricia D. Jehlen	Byron Rushing
Anne M. Paulsen	Robert M. Koczera
Barbara A. L'Italian	Timothy J. Toomey, Jr.
Jarrett T. Barrios	James R. Miceli
J. James Marzilli, Jr.	Martha M. Walz

In the Year Two Thousand and Five.

AN ACT RELATIVE TO CHILD LABOR LAW REFORM.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Chapter 149, as appearing in the 2002 Official
2 Edition, is hereby amended by striking out section 56 and
3 inserting in place thereof the following:—
4 Section 56. Notwithstanding any other provision of this
5 chapter, no minor under fourteen shall be employed in service on
6 a farm for a total of more than four hours in any one day nor more
7 than a total of twenty four hours in any one week, except the pro-
8 visions of this paragraph shall not apply to the employment of a
9 minor under fourteen who is related by blood or marriage to the
10 owner or operator of the farm on which the minor is employed.
11 Notwithstanding any other provision contained in this paragraph,
12 the limitations in hours of daily and weekly work by minors set
13 forth in sections 65, 66, and 67 shall be applicable to all work by
14 minors except as described herein.

1 SECTION 2. Section 57 of said chapter 149, as so appearing, is
2 hereby repealed.

1 SECTION 3. Section 60 of said chapter 149, as so appearing, is
2 hereby amended by striking out the first sentence of the second
3 paragraph and inserting in place thereof the following:—

4 Except as provided in sections sixty-nine and eighty-six, no
5 person shall employ a child under sixteen years of age to work in,
6 about, or in connection with any factory, workshop, manufac-
7 turing, or mechanical establishment at any time.

1 SECTION 4. Section 62 of said chapter 149, as so appearing, is
2 hereby amended by inserting after the words “or repairing of any
3 type of elevator”, in line 25, the following words:— or (16) in any
4 job or occupation requiring the possession or use of a firearm.

1 SECTION 5. Section 66 of said chapter 149, as so appearing, is
2 hereby amended by striking the words: - named in section fifty-six
3 or sixty.

1 SECTION 6. Said section 66 of said chapter 149, as so
2 appearing, is hereby further amended by inserting in line 4 after
3 the words “ten o’clock in the evening;” the following:—
4 nor in any establishment or occupation after 8:00 p.m. unless
5 such boy or girl is under the direct and immediate supervision of
6 an adult. For the purposes of this section, the requirement for
7 direct and immediate supervision may be satisfied by the presence
8 of a person twenty-one years of age or older acting in a supervi-
9 sory capacity, who is situated in the workplace and is reasonably
10 accessible to the minor employee.

1 SECTION 7. Section 78 of said chapter 149, as so appearing,
2 is hereby amended by striking the words in the first sentence “sec-
3 tions sixty to seventy-four” and inserting in place thereof the
4 following:— sections fifty-six to seventy-four.

1 SECTION 8. Said chapter 149, as appearing in the 2002 Offi-
2 cial Edition, is hereby further amended by inserting after section
3 78 the following section:—

4 Section 78A. As an alternative to initiating criminal proceed-
5 ings to enforce any violation of sections 56 through 104, inclu-
6 sive, or a violation of this chapter for improperly employing a
7 minor for which a criminal penalty is provided, the attorney
8 general may at his discretion issue a written warning or a civil
9 citation to the person responsible for such violation. Such a cita-
10 tion may require a person to comply immediately with sections 56
11 to 104, inclusive, and, for each violation, a civil penalty of not
12 more than \$500 for the first offense; \$1,000 for the second
13 offense; and \$5,000 for the third and each subsequent offense.
14 When determining the total number of any prior offenses under
15 this section, the Attorney General shall include all offenses com-
16 mitted per establishment location during the previous five years,
17 beginning on the date this section takes effect. A person cited
18 shall make full payment of the penalty amount specified herein to
19 the commonwealth within 21 days of the date of the citation. For
20 purposes of this section, each instance in which a minor is
21 required or permitted to work in violation of sections 56 through
22 104 of this chapter, inclusive, shall be deemed a separate viola-
23 tion.

24 Any person aggrieved by a citation issued pursuant to this
25 section may appeal said citation by filing a notice of appeal with
26 the attorney general and the division of administrative law appeals
27 within 15 calendar days of the date of issuance of said citation.
28 Any such appellant shall be granted a hearing before the division
29 of administrative law appeals in accordance with Chapter 30A.
30 The hearing officer may affirm, or if the aggrieved person demon-
31 strates by a preponderance of the evidence that the citation or
32 order was erroneously issued, vacate, or modify the citation. Any
33 person aggrieved by a decision of said hearing officer may file an
34 appeal in the superior court pursuant to the provisions of said
35 chapter 30A.

36 If any civil penalty imposed by a citation or order issued by the
37 attorney general remains unpaid beyond the time period specified
38 for payment, such penalty amount, together with the interest
39 thereon at the rate of 18 percent per annum, shall be a lien upon
40 the real estate and personal property of the person who has failed
41 to pay such penalty. Such lien shall take effect by operation of
42 law on the day immediately following the due date for payment of

43 such fine, and, unless dissolved by payment, shall, as of said date,
44 be considered a tax due and owing to the commonwealth, which
45 may be collected through procedures provided for by chapter 62C.
46 In addition to the foregoing, no officer of any corporation which
47 has failed to pay any penalty may incorporate or serve as an
48 officer in any corporation which did not have legal existence as of
49 the date said fine became due and owing to the commonwealth.

50 The failure of any person to comply with any citation issued by
51 the attorney general under this section or to pay any civil penalty
52 imposed thereby within 21 days of the date of the issuance of such
53 citation, or within 30 days following a decision of the hearing
54 officer if such citation has been appealed, excluding any time
55 during which judicial review of the hearing officer's decision
56 remains pending, shall entitle the attorney general to apply for a
57 criminal complaint against the violator for the violation for which
58 the citation was issued, or, in the alternative, to enter a civil com-
59 plaint in the district or superior court having jurisdiction over the
60 violator in order to enforce payment of the citation. In applying
61 for such criminal complaint, the attorney general shall be entitled
62 to seek all remedies and penalties provided for the violation under
63 this chapter.

1 SECTION 9. Section 86 of said chapter 149, as so appearing, is
2 hereby amended by striking out the first full sentence of the
3 section and inserting in place thereof the following:—

4 No person shall employ a child under the age of eighteen, other
5 than a child over the age of fourteen granted an employment
6 permit by the superintendent of schools when such superintendent
7 determines that the welfare of such child will be better served
8 through the granting of such permit, in any place of employment,
9 other than street trades as defined in sections 69 to 73, inclusive;
10 provided that students over fourteen in co-operative courses in
11 public schools may be employed by any co-operating establish-
12 ment as defined by section 1 upon securing from the superinten-
13 dent of schools a permit covering any such co-operating
14 employment.

1 SECTION 10. Said section 86 of said chapter 149, as so
2 appearing, is hereby further amended by striking out in lines 19

3 and 20 the words “The person employing a child between fourteen
4 and sixteen” and inserting in place thereof the following:— Any
5 person employing a child between fourteen and eighteen.

1 SECTION 11. Said section 86 of said chapter 149, as so
2 appearing, is hereby further amended by striking out in line 22 the
3 words “department of labor and industries” and inserting in place
4 thereof the following:— office of the attorney general.

1 SECTION 12. Section 87 of said chapter 149, as so appearing,
2 is hereby amended by inserting in line 5 after the words “resides
3 during his employment,” and inserting the following:— or the
4 town where the child attends school.

1 SECTION 13. Said section 87 of said chapter 149, as so
2 appearing, is hereby further amended by inserting into subpara-
3 graph (1) in line 17 after the words “pledge or promise” the
4 following:— signed by the prospective employee and his or her
5 parent or guardian.,

1 SECTION 14. Said section 87 of said chapter 149, as so
2 appearing, is hereby further amended by inserting into subpara-
3 graph (1) in line 22 after the words “in accordance with this
4 chapter,” the following:— which is summarized on the pledge or
5 promise form.,

1 SECTION 15. Said section 87 of said chapter 149, as so
2 appearing, is hereby further amended by inserting after the word
3 “chapter,” in line 22, the following words:— which is summarized
4 on the pledge or promise form.

1 SECTION 16. Said section 87 of said chapter 149, as so
2 appearing, is hereby further amended by inserting after the word
3 “thereunder,” in line 25, the following words:— ; and evidence
4 that a minor between sixteen and eighteen meets the requirements
5 for the completion of the sixth grade of the public schools of the
6 town in which he or she resides.

1 SECTION 17. The second paragraph of said section 87 of said
2 chapter 149, as so appearing, is hereby further amended by
3 striking out paragraph (3) and inserting in place thereof the
4 following paragraph:—

5 (3) For children under the age of 16, a certificate, signed within
6 the previous twelve months, by a school or family physician, or
7 by a physician appointed by the school committee, stating that the
8 child has been thoroughly examined by said physician, and, in his
9 or her opinion, is in sound health.

1 SECTION 18. Section 89 of said chapter 149, as so appearing,
2 is hereby amended by striking out in lines 27 and 28 the word
3 "sixteen" and inserting in place thereof the word:— eighteen.

1 SECTION 19. Section 94 of said chapter 149, as so appearing,
2 is hereby amended by striking out in line 5 the words:— or educa-
3 tional certificate.

1 SECTION 20. Said section 94 of said chapter 149, as so
2 appearing, is hereby further amended by striking out, in lines 6
3 and 7, the words "for which permits for employment or educa-
4 tional certificates are required.

1 SECTION 21. Said chapter 149 is hereby further amended by
2 striking out section 95, as so appearing, and inserting in place
3 thereof the following section:—

4 Section 95. If a minor over sixteen and under eighteen fails to
5 meet the requirements for the completion of the sixth grade, no
6 person shall employ such minor while a public evening school is
7 maintained in the town where the minor resides or in the town of
8 employment if he or she is authorized to attend public evening
9 school therein, unless such minor is a regular attendant at such
10 evening school or at a day school and presents to his or her
11 employer each week a school record of such attendance. When
12 such record shows unexcused absences, such attendance shall be
13 deemed to be irregular and insufficient. The person authorized to
14 issue permits for employment, or teachers acting in his or her
15 authority, may, however, excuse justifiable absence or waive the
16 school attendance requirements if, in the opinion of the school

17 physician, the physical or mental condition of a minor is such as
18 to render attendance harmful or impracticable.

1 SECTION 22. Section 95A of said chapter 149, as so
2 appearing, is hereby amended by striking out, in line 4, the words
3 "certificate required by section ninety-five" and inserting in place
4 thereof the following:— permit for employment required by
5 section eighty-six.

1 SECTION 23. Section 97 of said chapter 149, as so appearing,
2 is hereby repealed.

1 SECTION 24. Section 98 of said chapter 149, as so appearing,
2 is hereby amended by striking out such section and inserting
3 before the enacting clause the following emergency preamble:
4 Whereas the deferred operation of this act would tend to defeat
5 its purpose, which is to protect certain children in the labor force,
6 it is hereby declared to be an emergency law, necessary for the
7 immediate preservation of the public convenience.